

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING VIABILITY AS AN ELEMENT OF THE OFFENSE
7 OF PARTIAL-BIRTH ABORTION; AND AMENDING SECTION 50-20-401, MCA."

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9 WHEREAS, in Intermountain Planned Parenthood v. State of Montana, Cause No. ADV 9900561
10 (1st Judicial District, March 2000), it was determined that viability of the fetus must be established as an
11 element of the offense of causing a partial-birth abortion.

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 50-20-401, MCA, is amended to read:

16 **"50-20-401. Offense of partial-birth abortion -- exception -- definitions -- penalties.** (1) Except as
17 provided in this section, a person commits an offense if the person purposely, knowingly, or negligently
18 causes a partial-birth abortion of a fetus after viability.

19 (2) Subsection (1) does not apply to:

20 (a) a partial-birth abortion caused to save the life of a woman because the woman's life is
21 endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or
22 arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

23 (b) the woman upon whom a partial-birth abortion is performed.

24 (3) As used in this section, the following definitions apply:

25 (a) "Knowingly" has the meaning provided in 45-2-101.

26 (b) "Negligently" has the meaning provided in 45-2-101.

27 (c) (i) "Partial-birth abortion" means an abortion in which the person performing the abortion
28 partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

29 (ii) A procedure that constitutes a partial-birth abortion is one in which the following steps occur:

30 (A) the living fetus is removed intact from the uterus until only the head remains in the uterus;

1 (B) all or a part of the intracranial contents of the fetus are evacuated;

2 (C) the head of the fetus is compressed; and

3 (D) following fetal demise, the fetus is removed from the birth canal.

4 (d) "Purposely" has the meaning provided in 45-2-101.

5 (4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall
6 be punished by:

7 (a) a fine of not more than \$50,000;

8 (b) imprisonment in a correctional facility for a term of not less than 5 years and not more than
9 10 years; or

10 (c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

11 (d) permanent revocation of the license of the physician performing the partial-birth abortion. The
12 provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to
13 this section."

14 - END -